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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4950 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

J

2. To be referred to the Reporter or not? Yes

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No

J

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

J

5. Whether it is to be circulated to the Civil Judge? No

INDIAN FARMERS FERTILIZER COOPERATIVE LIMITED (IFFCO)

Versus

STATE OF GUJARAT

Appearance:

MR MB BUCH for SINGHI & BUCH ASSO. for Petitioner

MR ANANT DAVE Respondent No. 1

MR MUKUL SINHA for Respondent No. 2

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 11/09/98

ORAL JUDGEMENT

Heard Mr.Buch for the petitioner, Mr.Dave for Respondent No.1 and Mr.Sinha for Respondent No.2. This petition is filed to challenge the notification issued by

the first respondent State Government dated 3.6.1998 whereby the State has amended the earlier notification dated 18.10.1996, both these notifications being issued under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970.

2. The controversy leading to the present petition is as follows: The second respondent has been seeking abolition of contract labour system in certain trades, particularly loading and unloading in the establishment of the petitioner at Kalol. Initially, on 27.12.1995, a notification for abolition of contract labour in certain activities was issued wherein loading and unloading were not included. Respondent No.2 - Union filed Special Civil Application No.3066 of 1996 challenging non-inclusion whereas the petitioner - management filed Special Civil Application No.423 of 1996 challenging the very notification. On both these petitions, a common order was passed by my brother S.D.Dave, J. on 1.7.1996 remanding the matter to the Government. That led to the aforesaid notification dated 18.10.1996 under Section 10 of the Act whereby various (four in number) operations mentioned in the Schedule thereto came to be covered under the Act and contract labour was abolished in those operations. Those entries were as follows:

"1. Stacking of filled up urea bags on the platform after manufacturing process is over and pending loading into the railway wagons or trucks;

2. Collecting, bagging and standardising spilled urea and hopper flour etc.

3. Handling of spilled material and attending to cleaning of bagging floor, reclaim machines etc.

4. General cleaning."

After the above notification was issued, respondent No.2 Union filed Special Application No.8580 of 1996 making a grievance that loading and unloading operations remained to be mentioned specifically, whereas the petitioner filed Special Civil Application No.10116 of 1998 challenging that notification. Both these petitions came up before my brother Calla, J. By his common judgment and order passed on 6.3.1998 he upheld the notification but in para 10 of his judgment specifically held that Special Civil Application No.8580 of 1996 filed by the Gujarat Mazdoor Sabha succeeds in part to the extent that

non inclusion of the activity of loading and unloading is illegal and 'the State of Gujarat is directed to reconsider the question of including the activity of loading and unloading in respect of which the system of contract labour is to be abolished (in the light of this judgment through the notification and proceed in accordance with law. issued'(underlining supplied).

3. Thereafter, the State Government has issued notification dated 3.6.1998 which states that the Government had received the above-referred common judgment dated 6.3.1998 and, in exercise of the powers conferred under Section 1 (5) (b) and Section 10 of the Contract Labour (Regulation & Abolition) Act 1970, the Government of Gujarat was amending the notification dated 18.10.1996 to consider the process/activity of stacking and the activity of loading and unloading as composite activity. That fresh notification is challenged in this petition. It is submitted that Section 1 (5) (b) of the Act has no application in the present context. Section 1 (5) (b) reads as follows:

"1 (5) (b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.

Explanation - For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature -

(i) if it was performed for more than one hundred and twenty days in the preceding twelve months, or

(ii) if it is of a seasonal character and is performed for more than sixty days in a year."

Mr.Buch submits that, if at all this provision was to be pressed into service, a further consultation with the State Board was necessary. Mr.Dave, on the other hand, submits that consultations had taken place earlier itself and the aforesaid section was referred only to indicate the finality of the decision of the State Government. But, that apart, the second notification is sought to be

defended on the basis of Section 21 of the General Clauses Act, 1897 by contending that the Government does have the power otherwise also to amend the notification. Section 21 reads as follows:

> "21. Power to make, to include power to add to, amend, vary or rescind orders, rules or bye-laws. Where, by any Central Act or Regulation, a power to issue notification, orders, rules or bye-laws is conferred, then that power, includes a power exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

4. In this connection, it is material to note that the learned Judge (Calla J.) in the judgment has in terms held that both these activities are incidental to the activity of stacking of bags. Not only that, but Mr.Sinha for the second respondent has drawn my attention to the stand of the petitioner before the authorities below as well as in this court, where the petitioner has in terms stated in para 5.1 of the affidavit-in-rejoinder dated 28.7.1998 filed by K.Bhaskaran Manager (P& A) as follows:

> "I state and submit it was the stand of IFFCO that loading and unloading activity was a composite and integral part of stacking activity."

Mr.Sinha, therefore, submits that, in light of this material, the notification issued by the State Government was in the nature of an amendment to the earlier notification which is protected under Section 21 of the General Clauses Act, 1897.

5. Mr.Buch submits that this could not have been done. In his submission, the reconsideration will mean a complete fresh hearing once again to all concerned whereafter alone such a notification can be issued. He submits that therefore the notification now issued on 3.6.1998 is violative of the requirement of consultation with the Board under Section 10 (1) of the Act, since this full hearing was not afforded at this stage before issuing this notification. He also submits that, once the power under Section 10 of the Contract Labour (Regulation & Abolition) Act is exercised, the Government is functus officio and, therefore, by issuing an amendment that exercise cannot be redone and that too in such a shoddy manner.

6. Mr.Buch wants me to go into the entire material with respect to stacking and loading operations to submit as to why this reconsideration has to be done on merits. I have declined to do that. This is because one Judge has done this exercise in its entirety after hearing both the parties at length and has come to the conclusion that both the activities are essentially allied activities. The learned Judge has also relied upon a judgment of the Supreme Court reported in AIR 1990 SC 532 in the case of SANKAR MUKHERJEE v. UNION OF INDIA wherein the Supreme Court has held that jobs of stacking, loading and unloading are all incidental or allied jobs. I am not sitting in appeal against the judgment of my brother and hence I refuse to do the whole exercise once again. All that my brother has stated in para 10 is to direct the Government to reconsider the question of including the activity of loading and unloading 'in the light of this judgment' (i.e. his judgment) and to issue notification in accordance with law. That is what has been precisely done by the Statement Government. It has accepted the judgment of the learned Judge and issued the amending notification under Section 21 of the General Clauses Act. The issuance of the amending notification conveys the reconsideration on the part of the State Government and it is not necessary that this reconsideration should be separately reflected and indicated. This is because the earlier notification issued by the State Government (and the exercise of the hearing before the Advisory Board and the State Government which preceded it) was before the learned single Judge and the entire issue was gone into at length. Thereafter, when a direction is given to the Government and if the Government accepts the same and complies with it, in my view, no fault can be found therewith. That apart, as stated above, in view of the contents of the affidavit of the respondent quoted above, on facts, the petitioners do not have any quarrel nor can there be any quarrel with the proposition that loading and unloading are incidental to stacking in view of the judgment of the Supreme Court which, in fact, is followed by my brother. No reference to the Advisory Board was contemplated when the above direction was given by my brother. This direction to reconsider was in the nature of a direction to remove an anomaly and the follow up contemplated was only a continuation of the earlier exercise. Hence this submission of Mr.Buch cannot be accepted that the Government had become functus officio and that such an amendment could not be issued except after full hearing.

7. Mr.Buch has drawn my attention to the submission

in Ground No.2 of the petition in which certain observations on the Advisory Board's Report are made wherein it is stated that the activities which are sought to be prohibited need not be prohibited in view of availability of railway wagons etc. In my view what the Government has done is only to clarify what is stated in the earlier notification and that is in the light of the judgment given by the single Judge and not merely the Advisory Board's report. The Government cannot be faulted for that. Mr.Buch says that it is, therefore, that a further reference to the Advisory Board was required. As stated above, that was not directed by the single Judge nor was it contemplated.

8. Mr.Buch then submitted that, once a particular power is used, the power under Section 21 of the General Clauses Act cannot be used to improve upon. Mr.Buch with his usual industry relied upon different judgments of the Supreme Court under different statues. Mr.Buch relied upon judgment of the Supreme Court in the case of LT. GOVERNOR OF HIMACHAL PRADESH v. AVINASH SHARMA reported in AIR 1970 SC 1576 wherein it is laid down as follows:

> "After possession has been taken pursuant to a notification under S.17 (1) the land is vested in the Government, and the notification cannot be cancelled under S.21 of the General Clauses Act, nor can notification be withdrawn in exercise of the powers of the Land Acquisition Act under S.48. When possession of the land is taken under S.17 (1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification. AIR 1966 SC 1593 relied on)."

That judgment is quoted with approval in paragraph 27 of the subsequent judgment of the Supreme Court in K.G.MADHAVAN's case reported in AIR 1989 SC 49. In the case of STATE OF KERALA v. K.G.MADHAVAN PILLAI reported in AIR 1989 Supreme Court 49, the above judgment of the Supreme Court in LT. GOVERNOR v. AVINASH SHARMA AIR 1970 SC 1576 has been referred to and in para 27 the relevant observation made in the case of LT. GOVERNOR has been quoted, which reads as under:

> "Power to cancel a notification for compulsory acquisition is, it is true, not affected by Section 48 of the Act. By a notification under Section 21 of the General Clauses Act, the Government may cancel or rescind the

> notifications under Sections 4 and 6 of the Land Acquisition Act. The Court, however pointed out that the power under Section 21 of the General Clauses Act cannot be exercised after the land statutorily vested in the State Government. In another portion of the judgment it was observed that after possession has been taken pursuant to a notification under Section 17 (1) the land is vested in the Government and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 and that any other view would enable the Government to circumvent the specific provision by relaying upon a general power."

9. Now, what is material to note is that the controversy before the Supreme Court in that matter was altogether different and the question was as to when the land was vesting in the Government whether subsequently the earlier notification can be cancelled by using power under Section 21 of the General Clauses Act. That is altogether a different situation. Similarly, the next judgment relied upon by Mr.Buch in the case of THE STRAWBOARD MANUFACTURING CO. LTD. v. GUTTA MILL WORKER' UNION reported in AIR 1953 Supreme Court 95 does not advance his case. In that case, a specific time-limit was fixed for concluding industrial adjudication and submitting award. It was laid down that by using the power under Section 21 time-limit cannot be extended. Then Mr.Buch drew my attention to the case of STATE OF MADHYA PRADESH v. AJAY SINGH reported in AIR 1953 Supreme Court 825. In that case, a single member enquiry commission constituted under the Commission of Enquiry Act was sought to be replaced by substituting an existing member and the power under Section 21 was sought to be used to justify it and naturally the Court answered it in the negative. In the instant case, what is being done is to issue a mere amendment of an existing notification and it is clearly provided under Section 21 of the General Clauses Act and for the reasons stated earlier, that is fully in consonance with the facts and circumstances of the case as also the judgment of my brother Calla, J.

10. Mr.Sinha appearing for the second respondent in this connection relied upon the decision of the Division Bench of this Court in the case of SOUTH GUJARAT TEXTILE PROCESSORS' ASSOCIATION v. STATE OF GUJARAT reported in 1994 (1) Gujarat Law Herald 94 wherein the notification issued under Section 10 was held to be quasi-legislative

in nature and in that view of the matter, Mr.Sinha submitted that the submission of Mr.Buch that the Government had become functus officio was not tenable.

11. In view of the above, the submission of Mr.Buch that the Government had become functus officio cannot be accepted. The petition is, therefore, rejected.

(KMG Thilake)
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